

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming

CS Docket No. 95-61

COMMENTS OF HEARTLAND WIRELESS
COMMUNICATIONS, INC.

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In the Matter of)
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To: The Commission

COMMENTS OF HEARTLAND WIRELESS
COMMUNICATIONS, INC.

Heartland Wireless Communications, Inc. ("Heartland"), through counsel and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, respectfully submits the following comments in response to the Federal Communication Commission's ("FCC") Notice of Inquiry on the status of competition for the delivery of video programming, CS Docket No. 95-61, released May 24, 1995 (FCC 95-186).

Heartland is a publicly traded company which develops, owns and operates wireless cable television systems primarily in small to mid-size markets located in the central United States. Heartland operates MMDS systems in approximately 15 markets, and competes with franchised hard wire cable operators and other multichannel video programming distributors.

Heartland respectfully invites the Commission's attention to the practice of predatory promotional pricing by cable operators which compete with MMDS systems in their franchise areas. In Ada, Oklahoma, Heartland is currently investigating the pricing practices of a competing incumbent cable operator which has been said to offer heavily discounted promotional rates, and free

equipment and installation, to current Heartland subscribers. Heartland understands, upon information and belief, that the franchised cable operator has not offered such promotions on a universal basis either to its own subscribers or to all potential subscribers within its franchise area.

Such practices, if they have occurred, would greatly undermine the efforts of MMDS competitors to gain a foothold in the community and in the cable operator's franchised service area. In enacting the uniform rate requirements of section 623(d) of the 1992 Cable Act, Congress intended to prevent cable operators from "charging different subscribers different rates with no economic justification and unfairly undercutting competitor's prices," Third Report and Order on Reconsideration, 9 FCC Rcd 4316, 4325 (1994). Where there is no effective competition, and in most of Heartland's served communities, there is no effective competition, the uniform rate requirements of Section 623(d) must be met by the incumbent cable operator to prevent predatory pricing practices and to provide subscribers with fair and efficient rates.

Section 623(d) does not preclude the establishment of reasonable categories of customers and service by franchised cable operators. But the Commission should give heightened scrutiny to the categorical lines of service and subscribers drawn by franchised cable operators with respect to promotional offers. Heartland submits that a special rate targeted only at the subscribers of a competing wireless cable operator, and not universally applied, is an example of an unreasonable and unacceptable rate category under the statute. Such a category bears no resemblance to the social exclusions made in Section 623

(e) of the 1992 Cable Act or to any other rate category which the Commission has found to be reasonable and non-discriminatory. When the Commission has found other types of rate categories to be permissible, such as the MDU bulk discount rate, it has always evaluated the potential impact of the rate category on competing video program distributors has and imposed special conditions to prevent anticompetitive abuse by cable operators.

The Commission has recognized that promotional offerings may interfere with the development of a competitive market. See Third Order on Reconsideration, 9 FCC Rcd 4316, 5821 (1994). Heartland respectfully requests the Commission, if these matters should come before it, to be mindful of the distinctions between reasonable and unreasonable promotions in light of the purposes of the 1992 Cable Act and the goal of fostering effective competition amongst multichannel video programming distributors.

Respectfully submitted,

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